

THE HONORABLE RICARDO S. MARTINEZ

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SENIOR HOUSING ASSISTANCE GROUP,

Plaintiff/Counter-  
Defendant,

v.

AMTAX HOLDINGS 260, LLC, et al.

Defendants/Counter-  
Plaintiffs.

No. 2:17-cv-01115-RSM

**DECLARATION OF JAKE EWART  
IN SUPPORT OF SENIOR HOUSING  
ASSISTANCE GROUP'S AND  
SENIOR HOUSING ASSISTANCE  
CORPORATION'S RESPONSE TO  
AMTAX HOLDINGS 260, LLC'S  
MOTION FOR SUMMARY  
JUDGMENT**

AMTAX HOLDINGS 260, LLC, et al.,

Third-Party Plaintiffs,

v.

SENIOR HOUSING ASSISTANCE  
CORPORATION, et al.

Third-Party Defendants.

Pursuant to 28 U.S.C. § 1746, the undersigned hereby declares that:

1. I am an attorney with the firm of Hillis Clark Martin & Peterson P.S., which represents Plaintiff Senior Housing Assistance Group and Third-Party Defendant Senior

*Declaration of Jake Ewart  
(2:17-cv-01115-RSM)- 1*

**HILLIS CLARK MARTIN & PETERSON P.S.**  
999 Third Avenue, Suite 4600  
Seattle, WA 98104  
Tel: (206) 623-1745

1 Housing Assistance Corporation in this action. I have personal knowledge of the matters set  
2 forth in this declaration and am competent to testify in this matter.

3 2. Attached as **Exhibit A** are true and correct copies of deposition excerpts of the  
4 Deposition of Stephen Smith taken on July 18, 2018.

5 3. Attached as **Exhibit B** are true and correct copies of deposition excerpts of the  
6 Deposition of David Von Tilius taken on October 10, 2018.

7 I hereby declare, under penalty of perjury under the laws of the United States of  
8 America, that the foregoing is true and correct.

9 DATED this 14th day of December 2018, at Seattle, Washington.

10  
11  
12 s/Jake Ewart  
JAKE EWART

13  
14 ND: 21822.003 4826-8072-5378v3  
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*Declaration of Jake Ewart*  
(2:17-cv-01115-RSM)- 2

**HILLIS CLARK MARTIN & PETERSON P.S.**  
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Seattle, WA 98104  
Tel: (206) 623-1745

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of December, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

DATED this 14th day of December 2018, at Seattle, Washington.

By s/ Jake Ewart

Jake Ewart, WSBA #38655

Hillis Clark Martin & Peterson P.S.

999 Third Avenue, Suite 4600

Seattle, Washington 98104

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# **EXHIBIT A**

Stephen Smith

July 18, 2018

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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SENIOR HOUSING ASSISTANCE	)	No.
GROUP,	)	2:17-cv-01115-RSM
Plaintiff/	)	
	)	
Counter-Defendant,	)	
vs.	)	
AMTAX HOLDINGS 260, LLC, et	)	
al.,	)	
	)	
Defendants/Counter-	)	
Plaintiffs.	)	
	)	
AMTAX HOLDINGS 260, LLC, et	)	
al.,	)	
	)	
Third-Party	)	
Plaintiffs	)	
vs.	)	
SENIOR HOUSING ASSISTANCE	)	
CORPORATION, et al.,	)	
Third-Party	)	
Defendants.	)	

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Videotaped

Deposition Upon Oral Examination Of

STEPHEN SMITH

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July 18, 2018

1201 Third Avenue, Suite 4900, Seattle, Washington

REPORTED BY: PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR,

29906/No. 2704

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Stephen Smith

July 18, 2018

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1 dinner?

2 A. Or we go to a baseball game or a Seahawks  
3 game, a Mariners or Seahawks game. As far as dinner,  
4 a few times a year.

11:24:57 5 Q. Okay. And I mean, would you consider Bryan a  
6 friend of yours?

7 A. Yes.

8 Q. Okay. And a business partner?

9 A. Yes.

11:25:04 10 Q. Okay. Do your families ever interact? Do  
11 you ever --

12 A. Yes. We had dinner with our wives one time,  
13 the four of us.

14 Q. Okay. Do you recall approximately when that  
11:25:17 15 was?

16 A. A couple -- a year or two ago, yeah.

17 Q. Okay. And was there a special occasion for  
18 that, or was it just sort of an idea that it would be  
19 nice to all have dinner together?

11:25:39 20 A. Just an idea that it would be nice.

21 Q. I'm going to hand you another exhibit, No. 9.

22 (Exhibit-9 marked.)

23 Q. So Mr. Smith, the court reporter has handed

24 you what's been marked as Exhibit-9. Do you recognize

11:26:20 25 this document? Take your time to take a look at it.

Stephen Smith

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1 A. I can't say that I recognize it, but  
2 obviously I signed it.

3 Q. Well, that was going to be my next question.

4 A. Yeah.

11:26:44 5 Q. So if you turn to the -- let's see. If you  
6 look at those numbers that I mentioned before, those  
7 Bates numbers in the bottom corner. If you look at  
8 the one that ends in 547, is that your signature on  
9 that page?

11:27:02 10 A. Yes.

11 Q. Okay. And it's dated December 18th, 2014?

12 A. Yes.

13 Q. Okay. And if you go back to the first  
14 page of this document, it appears to be a real estate  
11:27:15 15 purchase and sale agreement between Meridian Court  
16 Apartments Limited Partnership and  
17 SSRE Development, LLC. Do you see that right in the  
18 preamble?

19 A. I do.

11:27:28 20 Q. Okay. And so do you understand that this was  
21 an offer by SSRE to purchase the Meridian Court  
22 Apartments from the limited partnership?

23 A. Yes.

24 Q. Okay. When did you first become aware of the  
11:27:45 25 existence of the Meridian Court Apartments?



Stephen Smith

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1 you'll have an offer -- a purchase and sale agreement  
2 that includes an offer, that if accepted, will become  
3 binding?

4 A. I'm sorry. Could you repeat that?

11:38:55 5 Q. Sure. Well, let me back up. Let's stick  
6 with the date. Is it typically your practice to put  
7 an expiration date on offers that you make to purchase  
8 real estate?

9 A. Yes.

11:39:10 10 Q. Okay. And usually how long of a period do  
11 you sort of let the offer stay open before it is  
12 withdrawn?

13 A. Two to four weeks.

14 Q. Okay. And you can't think of any reason,  
11:39:33 15 other than the relationship to December 18th, which  
16 is, I guess, 13 days before December 31st, 2014, you  
17 can't think of any other reason why December 31st,  
18 2014, was selected as the date the offer would expire?

19 A. That's correct.

11:39:49 20 Q. And did you -- now, going back to what I was  
21 inarticulately trying to get to before.

22 A. Um-hum.

23 Q. Was it your understanding that if the seller  
24 signed this agreement, that you would have a binding  
11:40:07 25 purchase and sale agreement that you would be



Stephen Smith

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1 contractually bound by?

2 A. Yes.

3 Q. Okay. And in your business, where you are  
4 interested in purchasing a piece of real property, is  
11:40:27 5 it typical for you to do it in this manner, to send  
6 the seller a real estate purchase and sale agreement,  
7 that if they sign it, then it's a consummated deal?  
8 Is that normally how you do things?

9 A. Isn't that obvious? I mean, of course.

11:40:45 10 Q. Well, I mean, have you ever heard of the term  
11 "letter of intent"?

12 A. Oh, I see. Right, of course, yes. Yes, I  
13 have heard of letter of intent, and yes, it was -- yes  
14 to your first question. It was my understanding that  
11:40:59 15 we would have a legally binding contract if the seller  
16 signed. Is that what you asked me?

17 Q. Well, my question was, in your general  
18 practice, putting this aside --

19 A. Okay.

11:41:09 20 Q. -- in your general practice, when you are  
21 interested in buying a property, do you -- is the  
22 first thing that you send to the seller a purchase and  
23 sale agreement, where if they sign it, it's a deal, or  
24 do you kind of --

11:41:19 25 A. Yes. I don't like letters of intent because

Stephen Smith

July 18, 2018

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1 Q. That's your assistant?

2 A. Yes.

3 Q. Okay. And does she still work with you?

4 A. Yes.

12:00:48 5 Q. How long has she been with you?

6 A. About eight years.

7 Q. Oh. Great. Before we get to the emails,

8 there's an attachment. You see at the top there that

9 shows an attachment, and Diane's email says, "Steve

12:01:15 10 and Bryan, attached is the signed purchase offer." So

11 I'd like to look at that attachment first, which is

12 the third page of the exhibit, Bates number ending in

13 714.

14 This appears to be a purchase and sale

12:01:29 15 agreement, dated as of December 23rd, 2015, between

16 Auburn North Associates Limited Partnership and SSRE

17 Development. Do you see that?

18 A. Yes.

19 Q. Okay. And if you look to page 14 of this

12:01:46 20 agreement, which is Bates number ending in 727, I'd

21 just like you to confirm again that that's your

22 signature there.

23 A. Yes.

24 Q. And the signature date on that is

12:01:58 25 December 29th, 2015?

Stephen Smith

July 18, 2018

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1 makes a counteroffer to this agreement, provided that  
2 such mutual acceptance or counteroffers delivered by  
3 seller to buyer on or before 5 p.m. on January 8th,  
4 2016." Do you see that?

12:11:43 5 A. Yes.

6 Q. So again, similar to Meridian Court, your  
7 understanding was that if Auburn North Limited  
8 Partnership signed this, then you would have a binding  
9 deal to purchase the property?

12:11:59 10 A. Yes.

11 Q. And do you recall whether you made a  
12 determination prior to submitting this offer that you  
13 had the capacity to perform the obligations set forth  
14 in this offer?

12:12:32 15 A. Well, that would have been step two after  
16 mutual acceptance, is putting all of the partners  
17 together to buy it.

18 Q. I'm not sure I understand what you mean.

19 A. I'm sorry. What was your question?

12:12:49 20 Q. Well, my question is, did you have  
21 \$21 million to buy this property?

22 A. No.

23 Q. Okay. And so what was the process that you  
24 were describing just now as step two?

12:13:04 25 A. Getting partners and putting together a

Stephen Smith

July 18, 2018

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## 1 C E R T I F I C A T E

2 STATE OF WASHINGTON )  
 ) ss.  
3 COUNTY OF KING )

4 I, the undersigned Registered  
5 Professional Reporter and Washington Certified Court  
6 Reporter, hereby certify that the foregoing deposition  
7 upon oral examination of STEPHEN SMITH was taken  
8 before me on July 18, 2018 and transcribed under my  
9 direction;

10 That the witness was duly sworn by me  
11 pursuant to RCW 5.28.010 to testify truthfully; that  
12 the transcript of the deposition is a full, true, and  
13 correct transcript to the best of my ability; that I  
14 am neither attorney for, nor a relative or employee  
15 of, any of the parties to the action or any attorney  
16 or counsel employed by the parties hereto, nor  
17 financially interested in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand and seal this date: July 23, 2018.

20

21 \S\ PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR

22 Court Reporter in and for the State of  
23 Washington, residing at Seattle. License expires  
24 07-02-19.

25

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# **EXHIBIT B**

David Von Tilius

October 10, 2018

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

-----  
SENIOR HOUSING ASSISTANCE GROUP, )  
Plaintiff-Counter- )  
Defendant, ) NO.  
vs. )  
AMTAX HOLDINGS 260, LLC, et al., ) 2:17-cv-01115 RSM  
Defendants/Counter- )  
Plaintiffs. )  
-----)  
AMTAX HOLDINGS 260, LLC, et al., )  
Third-Party Plaintiffs, )  
vs. )  
SENIOR HOUSING ASSISTANCE )  
CORPORATION, et al. )  
Third-Party Defendants. )  
-----

DEPOSITION UPON ORAL EXAMINATION  
OF  
DAVID VON TILIUS

-----  
9:05 a.m.

October 10, 2018

701 Fifth Avenue, Suite 3300

Seattle, Washington

REPORTED BY: Lauren G. Harty, RPR, CCR #2674



David Von Tilius

October 10, 2018

<p style="text-align: right;">Page 66</p> <p>1 forth, are any of them specifically addressing Section 2 42? 3 A. You'll have to give me a minute to -- 4 Q. Please take -- 5 A. -- look through this. 6 Q. Take whatever time you need. 7 A. Thank you. 8 I do not believe that any of the authorities 9 referenced in the portion of the report you just 10 referred to specifically relate to Section 42 as it 11 relates to the impact of a below-market rate option. 12 Q. Okay. 13 Are you familiar with a Massachusetts case 14 called Homeowners Equity? 15 A. I am. 16 Q. Okay. 17 And does that, at least to some degree, deal 18 with the option issue that is within this -- under 19 this heading? 20 A. I think that it does. 21 Q. Is there -- do you refer at all in your 22 report to the Homeowners Equity case? 23 A. I do not believe that I do, no. 24 Q. Any particular reason you did not? 25 A. I don't know if there's a particular reason.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. It was representing the limited partner in 2 that case as well. 3 Q. And were the -- was it one or more than one 4 limited partner in that case, as you understand it? 5 A. I believe it was one limited partner and one 6 special limited partner. 7 Q. And was that -- and were they AMTAX 8 entities? 9 A. They were not. 10 Q. Okay. 11 What -- does -- was AMTAX -- were any of the 12 parties AMTAX entities? 13 A. They were not. 14 Q. But they were entities that Alden Torch 15 would the correct term be represents? 16 A. They were funds managed by Alden Torch. 17 Q. Have you had any personal involvement in the 18 litigation that led up to the Homeowners Equity 19 decision? 20 A. I did not. 21 Q. Is it your understanding that the -- that 22 the decision was a decision by the highest court in 23 the state of Massachusetts? 24 A. That is my understanding. 25 Q. Could you please re -- switch for a second</p>
<p style="text-align: right;">Page 67</p> <p>1 I don't specifically agree with the ruling, not that 2 it's my determination to make. 3 Q. So you -- you think Homeowners Equity was 4 wrongly decided? 5 MR. PETTIT: Objection; lacks foundation, 6 outside the scope of his designation. 7 A. I don't agree with it. 8 Q. (By Mr. Walters) Would you agree that 9 Homeowners Equity does specifically address Section 10 42? 11 A. I would. I also think that case 12 specifically does say that there is a difference 13 between a ROFR and an option and concludes that a ROFR 14 does require an offer in order to be triggered. 15 Q. Why do you disagree with the Homeowners 16 Equity decision? 17 A. I think -- for all the reasons that I've 18 laid out in here, I think that there is substantial 19 history to the contrary. 20 Q. Now, in the Homeowners Equity case is it 21 correct to say that your employer was directly 22 involved? 23 A. I think that is a correct statement, yes. 24 Q. Okay. 25 And in what way was it involved?</p>	<p style="text-align: right;">Page 69</p> <p>1 to Exhibit 181, please. 2 A. Sure. Where specifically? 3 Q. Page 8 of Mr. Krabbenschmidt's report, 4 please. Just tell me when you have that in front of 5 you. 6 A. I've got it. 7 MR. PETTIT: Page 8 you said Denny? 8 MR. WALTERS: 8. 9 MR. PETTIT: Thank you. 10 Q. (By Mr. Walters) Under the heading "Global 11 Indemnity Agreement," the second paragraph, where it 12 starts, "As discussed above...", do you see where I'm 13 referring? 14 A. I do. 15 Q. And specifically I want to direct your 16 attention to where about two-thirds of the way down 17 Mr. Krabbenschmidt refers to the carve-out provided by 18 IRC Section 42(i)(7). Do you see that? 19 A. I do. 20 Q. Okay. 21 First of all, let me have you read that 22 entire paragraph -- take whatever time you need -- and 23 tell me if you agree with what Mr. Krabbenschmidt says 24 here or if you have any disagreement with him. 25 MR. WALTERS: So we can go off the record.</p>

18 (Pages 66 to 69)

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David Von Tilius

October 10, 2018

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1 S I G N A T U R E

2

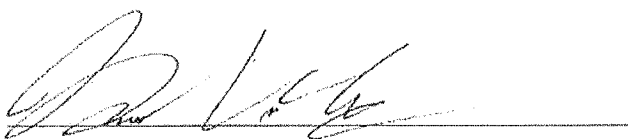
3 I declare under penalty of perjury under the  
4 laws of the State of Washington that I have read my  
5 within deposition, and the same is true and accurate,  
6 save and except for changes and/or corrections, if  
7 any, as indicated by me on the CHANGE SHEET flyleaf  
8 page hereof.

9 Signed in Denver, <sup>Colorado</sup> Washington, this  
10 12<sup>th</sup> day of November, 2018.

11

12

13



14

DAVID VON TILIUS

15

Taken: October 10, 2018

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22

23

24 Re: SHAG v. AMTAX, et al.  
Cause No.: 2:17-cv-01115 RSM  
25 Lauren G. Harty, RPR, CCR #2674

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David Von Tilius

October 10, 2018

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 2 600 University Street, Suite 320  
 3 Seattle, Washington 98101  
 4 206.622.6661

5 C H A N G E S H E E T

6 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,  
 7 SHOWING PAGE, LINE AND REASON.

8	PAGE	LINE	CORRECTION AND REASON
9	<u>13</u>	<u>17</u>	Delete "and" - typo
10	<u>13</u>	<u>21</u>	Change "could" to "would" - typo
11	<u>22</u>	<u>20</u>	Change "Resnick" to "Reznick" - typo
12	<u>38</u>	<u>24</u>	Change "and act and" to "enacted" - typo
13	<u>41</u>	<u>14-15</u>	Change "with disregard to any of the" to "are disregarded entities for" - typo
14	<u>43</u>	<u>17</u>	Change "seceding" to "succeeding" - typo
15	<u>44</u>	<u>12</u>	Change "seceding" to "succeeding" - typo
16	<u>48</u>	<u>19</u>	Change "is" to "as" - typo
17	<u>56</u>	<u>10</u>	Change "Hunter" to "Hunt" - typo
18	<u>78</u>	<u>11</u>	Change "ex" to "exit" - typo
19	<u>90</u>	<u>11</u>	Change "PNC" to "PNCC" - typo
20	<u>103</u>	<u>15</u>	Change "remain" to "retain" - typo
21	<u>151</u>	<u>20</u>	Change "PNC" to "PNCC" - typo

22

23 DAVID VON TILIUS  
 24 Taken: October 10, 2018

25

Re: SHAG v. AMTAX, et al.